

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6355 OF 2005

Office notes, office :
Memoranda of Coram, :
appearances, Court's : Court's or Judge's Orders
orders or directions :
& Registrar's orders :

Mr.Pravin Samdani with Sanjay Jain
with Prakash Shinde i/b M/s. Dhruva &
Co. for Petitioners.

Mr.S.G.Rajput for Respondent Nos.1 and
2.

CORAM: H.L.GOKHALE &
J.H.BHATIA, JJ.
DATE : 16th June, 2006.

P.C.:

1. Heard Mr.Samdani in support of
this Petition. Mr.Rajput appears for
respondents.

2. The petitioners are
challenging a notice under section
13(4) dated 31st August, 2005 issued
under the Securitisation and
Reconstruction of Financial Assets and
Enforcement of Security Interest Act,

2002 (for short 'Securitisation Act'. The submission of the petitioners is that for recovery of amounts which are sought to be recovered, the proceedings initiated earlier under the Maharashtra Co-operative Societies Act have been resorted. It is also submitted that the First Respondent Bank has intervened in the other proceedings initiated by Bank of India and the intervention application was rejected. It is, therefore, pointed out that the present petition be admitted and the impugned notice be injuncted from being proceeded further.

3. Mr.Rajput appearing for the 1st Respondent Bank points out that the proceedings under other Acts can not prevent an action under the Securitisation Act in view of the overriding effect given under section 34 of the present Act. An appeal is available against the impugned notice under Section 17 of this Act to the

Debt Recovery Tribunal. The respondents are infact alleging a fraudulent conduct on the part of parents of the petitioners who are minors.

4. We have noted the submissions. We do not propose to go into the merits of the submissions for the simple reason that an appeal is available under Section 17 of the Securitisation Act where pleas taken up the Petitioners and Respondents can be gone into. The petitioners are already protected by the interim order that possession of the flat is not to be taken. That will continue till the hearing and disposal of the appeal as and when filed by the petitioners. Time taken during the pendency of the present petition will be excluded for purposes of limitation. The respondents will take formal possession of the flat and issue a letter to that effect.

5. The Petition stands disposed
of.

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(H.L.GOKHALE, J.)

(J.H.BHATIA, J.)